

call a person or persons who are acquainted with the intricacies of a "hwei" if she herself was in no position to do so. Such evidence will no doubt be of great assistance to the court. It must be remembered not all magistrates are conversant with the nature of a "hwei" which is peculiarly Chinese and seems to exist wherever Chinese are found. Except for Sibu such cases are rare. Apart from the case of *Soo Hood Beng v. Khoo Chye Neo* ⁽³⁾ I have been unable to find any reported cases either in Singapore or Malaya in the *Malayan Law Journal* or elsewhere. A magistrate can only act on the evidence before him no matter where his sympathy lies. In my opinion the trial magistrate should have dismissed respondent's claim against appellant as she had not discharged the onus of proof on the balance of probabilities. I say nothing about his decision concerning the guarantor as there is no appeal against that part of his decision. The order of the lower court is set aside. I allow the appeal with costs to the appellant. Costs assessed at \$30.

Appeal allowed.

MOHAMED MYDIN v. RAMIAH

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah F.J.) September 24, 1964]

[Ipoh — Federal Court Civil Appeal No. 85 of 1963]

Sale of Goods — Unconditional contract for sale of specific goods — Sale of lorry — Registration book not delivered — Sale of Goods (Malay States) Ordinance, 1957, ss. 20 and 21.

The parties had agreed on the sale of a motor lorry and it appeared that a motor vehicle repairer had taken delivery of the lorry for repair on behalf of the plaintiff, who was the purchaser. The registration book of the lorry was however not handed to the plaintiff. The trial judge held that the lorry had not been delivered to the plaintiff and awarded damages against the defendant.

Held: the sale of a lorry can be complete and effective even though the registration book, which is not a document of title, is not made available to the buyer and the trial judge should have held in this case that the lorry was duly delivered to the plaintiff.

Case referred to:—

(1) *Sajan Singh v. Sardara Ali* [1960] M.L.J. 52, P.C.

FEDERAL COURT.

N. Sharma for the appellant.

F. C. Arulanandom for the respondent.

Cur. Adv. Vult.

Tan Ah Tah F.J.: This is an appeal by the defendant from a decision of the High Court in Malaya in a case which concerned the sale of a lorry.

The lorry originally formed part of the assets of a business dealing in rice, rubber, textiles and

A sundry goods of which one V. Shaik Dawood was the sole proprietor. On the 7th January 1957 V. Shaik Dawood entered into a written agreement with the defendant whereby the defendant agreed upon certain terms set out therein to buy the business as a going concern together with all the stock-in-trade including the lorry. On the 15th February 1957 V. Shaik Dawood executed a deed assigning and transferring all his right title and interest in the business to the defendant absolutely.

B The defendant in turn entered into an agreement with the plaintiff for the sale by the defendant to the plaintiff of the same business including the lorry. On the 25th February 1957 both the defendant and the plaintiff executed a deed whereby the defendant assigned and transferred all his right title and interest in the business to the plaintiff absolutely. One of the recitals in this deed was to the effect that by the indenture dated 15th February 1957 and made between V. Shaik Dawood and the defendant, the defendant became the owner of the business together with all the stock-in-trade including the lorry.

E A dispute arose between the plaintiff and the defendant some time after the execution of the deed. The plaintiff alleged that the defendant had failed to deliver the lorry to him. He accordingly sued the defendant for the sum of \$5,000 which was the amount at which he valued the lorry. The learned trial judge held that the lorry had not been delivered to the plaintiff. He also expressed the view that the defendant had failed to put the lorry into a deliverable state and that therefore the property in the lorry had not passed to the plaintiff. He therefore gave judgment for the plaintiff for the sum of \$3,500 being the amount at which he assessed the value of the lorry. It is against this judgment that this appeal is brought.

G It is clear from the evidence that in February 1957 the witness Ng Boon Yong, who was a motor vehicle repairer, took the lorry from the police station at Ayer Tawar, where it had been kept, to his workshop. According to the police officer who was called to give evidence regarding the lorry, it was removed from the Police Station on the 28th February 1957. Ng Boon Yong stated that he took the lorry to his workshop on the plaintiff's instructions. It is to be observed that he was called to give evidence on behalf of the plaintiff. The learned trial judge stated that in his opinion there could not be any doubt that as between the parties some arrangement had been made to have the lorry removed from the police station at Ayer Tawar to the workshop. However, because the registration book relating to the lorry had not been handed to the plaintiff,

the learned trial judge felt himself unable to find that the lorry was delivered to the plaintiff.

As to the question whether the property in the lorry had passed to the plaintiff it is necessary to refer to sections 20 and 21 of the Sale of Goods (Malay States) Ordinance, 1957 which read as follows:—

"20. Where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price, or the time of delivery of the goods, or both, is postponed.

21. Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof."

The learned trial judge expressed the view, with which I agree, that the indenture dated the 25th February 1957 was clearly in the nature of an unconditional contract for the sale of specific goods. However, he went on to say that the lorry was not in a deliverable state and gave as a reason for that view the fact that the defendant had not taken the necessary steps to cause the lorry to be registered in the plaintiff's name.

In my opinion, the learned trial judge was unduly concerned with the fact that the registration book was not made available to the plaintiff. There is no doubt that he took this fact into account when he decided that the lorry had not been delivered to the plaintiff and that the property in the lorry had not passed to the plaintiff.

The legal position of the registration book has been considered in several cases. One of these is the case of *Sajan Singh v. Sardara Ali* ⁽¹⁾ where Lord Denning, who delivered the judgment of the Privy Council, said (at p. 54):—

"Their Lordships do not overlook the fact that the defendant remained registered as the owner of the lorry and that no permission was given for the sale: but this did not prevent the property in it passing to the plaintiff. The registration book is not in Malaya, any more than it is in England, a document of title. The title passed by the sale and delivery of the lorry to the plaintiff. The absence of registration would no doubt put the plaintiff in difficulty if he had to prove his title, but it would not invalidate it, see *Bishopsgate Motor Finance Corporation Ltd. v. Transport Brakes Ltd.*"

It is clear that the sale of a lorry can be complete and effective even though the registration book is not made available to the buyer. Bearing that in mind, I am of opinion that the learned trial judge should have held that the lorry in the present case was duly delivered to the plaintiff in February 1957. Indeed, the lorry was, in my judgment, in a deliverable state on the 25th February 1957, and the property in it therefore passed to the plaintiff on that day. The fact that the ignition key was in Shaik Dawood's possession makes no difference. A new ignition

key could have been easily made or purchased. Moreover, the evidence shows that the plaintiff took delivery of the lorry through Ng Boon Yong, who must be regarded as having been his servant or agent. The plaintiff must therefore be deemed to have waived his right to have the ignition key delivered to him.

For the reasons which I have stated, I would allow the appeal with costs and set aside the judgment of the court below.

Thomson L.P. and Barakbah C.J. (Malaya) concurred.

Appeal allowed.

Solicitors: N. Sharma; Arulanandom & Co.

LAU ENG TECK v. PUBLIC PROSECUTOR

[A.Cr.J. (Harley J.) September 24, 1964]

[Kuching — Criminal Appeal No. K. 11 of 1964]

Criminal Procedure — Trial — Plea of guilty — Admission of guilt without qualification — Knowingly permitting premises to be used as a brothel — Penal Code, (Sarawak Cap. 57), s. 373C(c).

In this case the appellant was charged with knowingly permitting premises to be used as a brothel. He pleaded guilty and was convicted. The evidence was that a hotel guest was found with a woman in a room in the hotel and that they admitted using the room for sexual intercourse. The appellant said he did not know about the matter as he was playing "mahjong" at the time.

Held: (1) it was clear that the appellant's plea did not constitute an unequivocal plea of guilty and his plea should not have been accepted;

(2) the facts disclosed by the prosecution did not indicate that the appellant's hotel was being used as a brothel, still less that it was so used with the knowledge or permission of the appellant.

MAGISTRATE'S CRIMINAL APPEAL.

George Seah Kim Seng for the appellant.

Wan Alwi (Deputy Public Prosecutor) for the respondent.

Harley J.: In the District Court of Kuching, appellant was charged as follows:

"That you on or about the 21st day of July, 1964 at about 2300 hours, at Kuching, being a person who owns certain premises, to wit, Sarawak Hotel, Padungan Road, Kuching, did knowingly permit such premises to be used as a brothel and thereby committed an offence punishable under section 373C(c) of the Penal Code."

The wording of the charge appears to be an amalgam of sub-sections (b) and (c) of section 373C. One of the grounds of appeal, possibly a sound one, is that the conviction cannot stand, because appellant was found guilty on a charge which does not exist. Section 373C reads as follows:

"Any person who —

(a) keeps or manages or acts or assists in the management of a brothel;